

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Illinois

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Civil Money Penalty: Describe the criteria (as required at §1919(h)(2)(A)) for applying the remedy.

X Specified Remedy

(Will use the criteria and notice requirements specified in the regulation.

X Alternative Remedy

(Describe the criteria and demonstrate that the alternative remedy is as effective in deterring non-compliance. Notice requirements are as specified in the regulations.)

PLEASE NOTE: THIS ALTERNATIVE REMEDY, BY STATE LAW, IS TO BE USED ONLY WHEN IT PRODUCES A CIVIL MONETARY PENALTY THAT IS GREATER THAN THE PENALTY ASSESSED UNDER FEDERAL REGULATIONS. THE STATE BELIEVES THAT GIVEN THE AMOUNT OF PENALTIES ESTABLISHED BY FEDERAL REGULATION, THERE WILL BE FEW, IF ANY, INSTANCES WHERE THE PENALTY ASSESSED UNDER THE FEDERAL REGULATION WILL BE LESS THAN THE PENALTY ESTABLISHED BY STATE LAW.

Imposed plans of correction and civil fines. The State has the authority to issue orders demanding the correction of identified violations of the licensure rules. This provision allows the State to establish short time frames for compliance (e.g., 24 hours). Failure to comply subjects the facility to a daily accruing fine in the amount specified in Illinois law. This fine continues to accrue until compliance has been verified by the Department of Public Health.

The State issues civil fines/penalty assessments as an alternative to civil money penalties specified in § 1919(h)(2)(A)(ii). Use as an alternative is based on the following rationale:

- The experience that the State has had with the existing fining system which has proved to be an efficient method to assure compliance with the imposed plans of correction;
- The ability to issue fines in a predetermined monetary amount which eliminates the possibility of disputes arising solely on the basis of the dollar amount and not the validity of the underlying deficiency; and
- The ability to deduct fine payments directly from the Medical Assistance funds due the facility in the event that the fines are not paid within a thirty day period.

The State has had a fining system as part of its nursing home licensure law since 1979. The current fining system for nursing homes is contained in Section 3-305 et seq. of the Nursing Home Care Act. The basic mechanism of the fining system is as follows:

TN No. 95-21
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TN No. 89-19

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- A. The Illinois Department of Public Health is authorized to issue notices of violation to a nursing home upon the determination that the facility is in violation of a provision of state statute or regulation.
- B. The notice of violation identifies the violation, cites the law or rule violated and the Department of Public Health either obtains a plan of correction from the facility or imposes a plan of correction. The Department has the discretion in setting the amount of time for correction. (Time periods can be extended in the event that the facility has made good faith attempts to comply and that the residents are not in jeopardy.)
- C. After the time period for correction has elapsed, the Department of Public Health will conduct a reinspection to determine if the facility is in compliance with the correction orders. If it is determined that the facility is not in compliance, the Department will issue a written notice of violation identifying which violation had not been corrected and impose a fine in a predetermined amount for each day in which the facility is out of compliance.
- D. The fine will begin on the date a notice of violation is served and will continue for each day in which the facility is out of compliance. The facility must make a written notification that compliance has been attained, and this will be subsequently verified by the Department of Public Health. If the correction was not made, the fine accrual will resume. The facility has the right to appeal the issuance of the fine; however, the appeal does not stop the accrual of the fine.
- E. If the facility does not appeal or if the Department prevails at the hearing, the fine must be paid within 10 days. If payment is not made, the Department of Public Health is required to notify the State Treasurer which is required to deduct the penalty amount from Medical Assistance payments due or to be due the facility or from any other monies owed the facility by the State.

The schedule of fines for noncompliance is contained in Section 3-305 et seq. of the Nursing Home Care Act. The fine amounts range from \$500 to \$10,000 and the amount of the fine for each specific rule violation is based on the nature of the violation and the degree of harm that noncompliance presents to the resident.

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A Type "A" violation results in a fine computed at a rate of \$5 per resident in the facility plus 20 cents per resident for each day of the violation, or a fine of not less than \$5,000, or when death, serious mental or physical harm, permanent disability, or disfigurement results, a fine of not less than \$10,000 whichever is greater. A Type "B" violation results in a fine computed at a rate of \$3 per resident in the facility plus 15 cents per resident for each day of the violation, or a fine of not less than \$500, whichever is greater.

This fining system has proven to be an efficient mechanism to encourage and to compel compliance with plans of correction. The Department of Public Health issues approximately 1600 notices of violation per year. The number of penalty assessments issued is approximately 35. It is the Department's experience that facilities have generally been in compliance with the plan of correction at the time of the reinspection. One of the reasons for that must be attributed to the Department's ability to impose monetary fines on a daily accruing basis. The enactment of the fining system in 1979 made Illinois one of the first states to develop intermediate sanctions and we believe that our experience with this fining system warrants consideration as an alternative to the federal civil penalty system.

When this alternative remedy is used it will result in a larger fine than the one produced under the federal regulations. The state believes that this will produce an even greater incentive for facilities to correct deficiencies.

The state has no need to impose interest on late payments because of other mechanisms in place to collect fees that aren't paid. If a fine is not paid, the state deducts the amount of the fine from Medical Assistance payments due the facility. This is the same process used by HCFA in the case of Medicare facilities.

Funds collected as the result of imposition of civil fines are applied to the protection of the health or property of residents, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

In summary, we believe that the State licensure authority provides an efficient and effective intermediate sanction that is designed and accomplishes compliance with plans of correction, and, if fines are issued, for an effective and efficient mechanism to issue, process and collect the fines.

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A third difference is the fact that the State does not collect interest on unpaid fines. The State's ability to deduct the fine amount directly from Medical Assistance payment makes such a provision unnecessary. If the facility does not pay within the statutory time frame, the money is deducted. This avoids the initiation of a subsequent legal proceeding to compel the payment of the fine.

Funds collected as the result of imposition of civil fines are applied to the protection of the health or property of residents, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

In summary, we believe that the State licensure authority provides an efficient and effective intermediate sanction that is designed and accomplishes compliance with plans of correction, and, if fines are issued, for an effective and efficient mechanism to issue, process and collect the fines.